MONTANA LEGISLATIVE HISTORY

Chapter 46 19 95

Bill H 37 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 12	✓ C	Hearing Date(s)	Feb 02	✓ C
	Jan 12	✓ C			C
		C			C
		C			C
Date Out	Jan 12	✓ C		Feb 02	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1/02	FIRST READING		
1/02	REFERRED TO HUMAN SERVICES & AGING		
1/03	FISCAL NOTE RECEIVED		
1/03	FISCAL NOTE PRINTED		
1/04	HEARING		
1/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/13	2ND READING PASSED	93	4
1/16	3RD READING PASSED	94	4
	TRANSMITTED TO SENATE		
1/17	FIRST READING		
1/17	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/30	HEARING		
1/31	COMMITTEE REPORT—BILL CONCURRED		
2/01	2ND READING CONCURRED	50	0
2/02	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
2/04	SIGNED BY SPEAKER		
2/06	SIGNED BY PRESIDENT		
2/06	TRANSMITTED TO GOVERNOR		
2/08	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 35		
	EFFECTIVE DATE: 10/01/95		

HB 37 INTRODUCED BY ELLINGSON

REMOVE STATUTE OF LIMITATIONS EXTENSION FOR A PERSON INCARCERATED ON A CRIMINAL CHARGE OR UNDER A SENTENCE FOR A TERM LESS THAN LIFE

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

12/22	INTRODUCED		
1/02	FIRST READING		
1/02	REFERRED TO APPROPRIATIONS		
1/09	REREFERRED TO JUDICIARY		
1/13	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED		
1/19	2ND READING PASSED	99	1
1/20	3RD READING PASSED	97	0
	TRANSMITTED TO SENATE		
1/21	FIRST READING		
1/21	REFERRED TO JUDICIARY		
2/02	HEARING		
2/02	COMMITTEE REPORT—BILL CONCURRED		
2/03	2ND READING CONCURRED	49	0
2/04	3RD READING CONCURRED	45	0
	RETURNED TO HOUSE		
2/07	SIGNED BY SPEAKER		
2/07	SIGNED BY PRESIDENT		
2/08	TRANSMITTED TO GOVERNOR		
2/10	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 46		
	EFFECTIVE DATE: 10/01/95		

HB 38 INTRODUCED BY HARRINGTON

CLARIFY THE RESOURCE INDEMNITY TRUST TAX ON TALC, COAL, VERMICULITE, AND LIMESTONE

BY REQUEST OF THE DEPARTMENT OF REVENUE

12/22	INTRODUCED
12/28	FISCAL NOTE REQUESTED

HOUSE BILL NO. 37

INTRODUCED BY ELLINGSON

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE STATUTE OF LIMITATIONS EXTENSION FOR A PERSON INCARCERATED ON A CRIMINAL CHARGE OR UNDER A SENTENCE FOR A TERM LESS THAN LIFE; AMENDING SECTION 27-2-401, MCA; AND PROVIDING FOR RETROACTIVE APPLICABILITY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-2-401, MCA, is amended to read:

"27-2-401. When person entitled to bring action is under a disability. (1) If a person entitled to bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either a minor~~,~~ or seriously mentally ill, ~~or imprisoned on a criminal charge or under a sentence for a term less than for life,~~ the time of ~~such~~ the disability is not a part of the time ~~limited~~ limit for commencing the action. However, the time ~~so limited~~ limit cannot be extended more than 5 years by ~~any such~~ the disability ~~except minority~~ of serious mental illness.

(2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of the transaction upon which the action might have been founded was under one of the disabilities mentioned in subsection (1) may, within 5 years after the cessation of ~~such~~ the disability, maintain an action to recover damages. In ~~such~~ the action, ~~he~~ the person may recover ~~such~~ the sum or the value of ~~such~~ the property ~~as he~~ that the person would have received upon the final distribution of the estate if an action had been seasonably commenced by the personal representative.

(3) ~~No~~ A person may not ~~avail himself of~~ claim a disability unless it existed when ~~his~~ the right of action or entry accrued.

(4) When ~~two or more~~ both disabilities referred to in subsection (1) coexist at the time the right of action or entry accrues, the limitation does not attach until ~~all~~ both are removed."

NEW SECTION. **Section 2. Applicability -- retroactive effect.** [Section 1] applies retroactively, within the meaning of 1-2-109, as provided in this section. If a cause of action accrued before [the

effective date of this act] to a person incarcerated on a criminal charge or under a sentence for a term less than life, the person must bring an action by the earlier of the following dates:

(1) the last day on which the action could have been brought under 27-2-401 as that section read prior to [the effective date of this act]; or

(2) the last day on which an action can be brought under 27-2-401, as amended by [section 1], for a cause of action that accrued on [the effective date of this act].

-END-

{Tape: 1; Side: A}

HEARING ON HB 37

Opening Statement by Sponsor:

REP. JON ELLINGSON, HD 65, brought HB 37 at the request of the Department of Administration for consideration by the committee. It is a civil statute of limitations bill which would restrict the rights of incarcerated criminals. The current law recognizes that if one is seriously mentally ill, or a minor, the statute of limitations should be extended. The law currently also extends to persons who are imprisoned on a criminal charge. Aside from speculation that the case of Gideon vs Wainwright made this exception a matter of law, the reason for the original inclusion of this exception was not known. The situation now is different in that everyone who is incarcerated at Deer Lodge has had the right to counsel prior to going there, the facility has an extensive law library, and there is an active legal advocacy program for the prisoners. Given these changes, the exception of prisoners from the statute of limitations no longer seems appropriate. The bill is designed to eliminate the disparity of rights that now exists between incarcerated criminals and other citizens by imposing the same statute of limitations on those criminals.

Other modest changes are made to the language of the current statute. It is the intention of the Department of Administration upon the passage of this bill into law, that it have retroactive application to existing claims.

Proponents' Testimony:

Bill Gianoulias, Chief Defense Counsel, Department of Administration, Risk Management and Tort Defense Division, presented written testimony in support of their request for this bill. **EXHIBIT 1**

Opponents' Testimony:

Russell Hill, Executive Director, Montana Trial Lawyers Association (MTLA), said MTLA opposes HB 37. He said the bigger issue is suits against non-state entities and other rights of action the prisoners may have. He disputed the argument that prisoners have the same ability as other citizens to file suit, though he agreed that their rights have greatly increased. He said the association also has problems with the retroactive portion of the bill.

Scott Crichton, American Civil Liberties Union (ACLU), explained that when the ACLU gets involved in cases representing inmates, the cases are civil and class actions and so they are not

regularly involved. It is his understanding that the defender project is also limited in their role. Law students are often used to provide legal assistance for inmates. Thus, he felt that it was not accurate to say that there is plenty of representation for inmates.

{Tape: 1; Side: A; Approx. Counter: 14.3}

Questions From Committee Members and Responses:

CHAIRMAN CLARK asked **Mr. Hill** if inmates are allowed to file suits against parties other than the state.

Mr. Hill answered, "Yes."

CHAIRMAN CLARK asked how many of those suits are pending at this time.

Mr. Hill replied that he did not know.

CHAIRMAN CLARK referred the same question to **Mr. Crichton.**

Mr. Crichton said he had no way of knowing.

CHAIRMAN CLARK asked **Mr. Gianoulias** the same question.

Mr. Gianoulias did not know.

REP. DANIEL MC GEE asked **Mr. Gianoulias** to address the concerns with the retroactive clause.

Mr. Gianoulias said that he would bring an amendment which would address that issue.

Closing by Sponsor:

REP. ELLINGSON waived closing.

HEARING ON HB 55

Opening Statement by Sponsor:

REP. JOHN BOHLINGER, HD 14, brought HB 55, at the request of the Department of Social and Rehabilitative Services (SRS), Child Support Enforcement Division. This bill revises the child support income deduction laws of Montana so that they will conform with federal law. He described the various requirements and reasons for enactment of this bill.

Proponents' Testimony:

Mary Ann Wellbank, SRS, Administrator, Child Support Enforcement Division, presented written testimony in support of HB 55. **EXHIBIT 2** She also distributed a booklet describing the program.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/13/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓ late		~~✓~~
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 1
DATE 1/13/95
HB 37

DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT AND TORT DEFENSE DIVISION

MARC RACICOT, GOVERNOR

1500 EAST SIXTH—LOWER LEVEL
PO BOX 200124

STATE OF MONTANA

TELEPHONE (406) 444-2421
FAX (406) 444-2592

HELENA, MONTANA 59620-0124

January 13, 1995

TESTIMONY IN SUPPORT OF HB 37, by Bill Gianoulias, Chief Defense Counsel, Risk Management and Tort Defense Division, Department of Administration.

The Risk Management and Tort Defense Division requested and supports HB 37. This bill simply provides that people in prison have the same statute of limitations that applies to everyone else.

Section 27-2-401 MCA now provides a person imprisoned on a criminal charge, or under a sentence for a term less than life, with up to a five year extension for bringing a lawsuit. If a person in prison has a tort claim to file, instead of a three year statute of limitations, the time period to file a lawsuit is eight years. This amendment will eliminate the five year extension and allow a person in prison three years to file suit, the same amount of time as for everyone else.

While inmates may have had difficulty gaining access to courts in the past, it is not so now. Of 203 open lawsuits we are presently defending, 97 of them have been brought by inmates. Inmates also have access to courts through the Montana Defender Project which is funded by the state and run by the University of Montana Law School. Many inmates have access to computers and access to a law library maintained by the state for the inmates at the prison.

We request that you pass HB 37.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/13/95

BILL NO. HB 37 SPONSOR(S) Rep. Eddleman

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bill Gianoulias Tenders Rtnr. Rldg.	RMTD - Dept. of Administration	✓	
Scott Crichton	ACLU		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

SEN. KLAMPE thanked the committee and asked for someone to carry the bill in the House.

EXECUTIVE ACTION ON SB 7

Motion/Vote: **REP. DIANA WYATT MOVED SB 7 BE CONCURRED IN.** Motion carried 19 - 0.

REP. BOHARSKI objected to putting SB 7 on the consent calendar.

EXECUTIVE ACTION ON HB 131

Motion/Vote: **REP. BOHARSKI MOVED TO TABLE HB 131.** The motion carried 13 - 6 with **REPS. WYATT, SOFT, MOLNAR, TREXLER, CURTISS** and **SMITH** voting no.

EXECUTIVE ACTION ON HB 37

Motion: **REP. SHIELL ANDERSON MOVED HB 37 DO PASS.**

Discussion: **REP. JOAN HURDLE** said that she had a note indicating that the committee had decided to amend HB 37 at line 9.

CHAIRMAN CLARK said that the amendment would remove section 2 totally from the bill which would eliminate the retroactive portion of the bill.

REP. WYATT said that she had made reference to that amendment because it is not known what kinds of requests or problems have developed within the prison system and thus what time frames would be sufficient.

Motion: **REP. WYATT MOVED THE AMENDMENT.**

Discussion: **REP. LIZ SMITH** said while she tended to agree with **REP. WYATT**, she felt that there should be some level of retroactivity, perhaps one year from the date of passage.

REP. BERGMAN asked if this would be moving the statute of limitations down from five years to three.

CHAIRMAN CLARK said he believed this would just limit it to five years.

REP. DEB KOTTEL described her understanding that the bill would eliminate entitlement for extension of a statute of limitations to prisoners who could claim imprisonment as a disability under the present law. In terms of the proposed amendment, she believed that any causes of action prior to the effective date of this bill would be under the old law. After the effective date, being imprisoned is not a disability if there is no retroactive clause in the bill.

REP. SMITH suggested a retroactive clause to be applied to existing claims.

REP. WYATT said that there should be a clear statement as to the application of this bill to past, present and future claims.

REP. HURDLE asked **REP. WYATT** if that could be accomplished by eliminating this section.

CHAIRMAN CLARK asked whether claims that have been filed as of the time this statute would come into effect would be honored.

REP. WYATT asked **Mr. MacMaster** to clarify the effective date of the proposed legislation. Her intent was to eliminate retroactivity.

Mr. MacMaster said that the retroactivity and the effective date applicability were two different things. Whether or not the applicability section is left in, the bill would take effect October 1, 1995. The retroactivity means that starting at the point at which the bill takes effect causes of action would be affected backwards in time from that date. In his opinion, if section 2 is removed as **REP. WYATT'S** amendment would do, the bill takes effect October 1, 1995, and the law as amended by the bill would apply to causes of action that accrue after that date.

REP. BOHARSKI reiterated the effect of the bill which is intended to take out the definition of a disability allowing for the extension of a statute of limitations from those who are imprisoned. He asked if on line 30 of page 1, it was correct that the wording referring to a cause of action occurring before the effective date of this act, meant the actual incident.

REP. WYATT answered, "Yes."

REP. BOHARSKI suggested that any causative action that occurs before the effective date of this act should be subject to the act that was in effect at the time that causative action occurred. He felt that was what was intended on lines 3-6 on page 2 though he was not sure that was what they were doing.

REP. WYATT stated that the intent of her amendment was exactly as **REP. BOHARSKI** stipulated and that she would leave the wording to **Mr. MacMaster.**

REP. ANDERSON asked if this section is taken out and a person is currently under this disability, for as long as he is in prison, he continues to toll the statute (sic)..

Mr. MacMaster said, "Right, it is tolled for no more than five years."

REP. BOHARSKI stated that it appears to him that if a person is in prison now, the statute continues to runs so along as the person is there and the old law applies. He felt this change would give five years to those presently incarcerated just at it would apply to those imprisoned after the effective date of the new law.

CHAIRMAN CLARK said that was not right.

REP. KOTTEL said that she saw a consensus of what the committee wanted to do. She suggested that she, **REP. ANDERSON** and **Mr. MacMaster** confer to bring an amendment that would satisfy this consensus.

REP. BOHARSKI asked her to state what her understanding was of what they want to do.

REP. KOTTEL said that in terms of fairness regarding retroactivity there was a consensus yet she heard that perhaps this issue is already taken care of in the language on page 1.

CHAIRMAN CLARK suggested a ten-minute break for these three to clean up the language.

CHAIRMAN CLARK reconvened the committee.

REP. ANDERSON did a visual demonstration of the effects of the amendment. The sum of it was that if the intent is to speed the cases along, at the point of the effective date of the act, put everyone in the same boat, then vote to leave the retroactive clause in. If the intent is to give the people who automatically had five years a year ago to continue to give them that five years plus the time of action on cause of action, then vote to take the retroactive clause out. He mentioned that **REP. KOTTEL** presented food for thought that with substantive change, perhaps there would be violation of constitutional rights.

REP. AUBYN CURTISS said that when another bill was presented there was testimony that indicated that people who are incarcerated now have access to all kinds of libraries and other sources legal recourse.

REP. ANDERSON said that he agreed and he would vote to leave the retroactive clause in. He observed while working on the Defender Project that the prisoners have a large legal network and that if this bill is passed, they would realize that they had better get on with the filing of their cause of action.

REP. CURTISS said she would also support leaving it in.

REP. WYATT said that she understood that all grievances could be redressed retroactively. She used an example to support her view that the retroactive clause should be removed. She felt that the best thing to do was to take law from this time forward and not retroactive in general.

REP. BOHARSKI asked **REP. ANDERSON** to apply his timing analogy to a hypothetical case he outlined in which the person would have had a cause of action seven years ago.

REP. ANDERSON said that person would have already used their five years of automatic stay, plus two years (in a negligent auto accident case), so after the effective date, they would only have one year in either case.

REP. BOHARSKI asked for the example to be applied to someone with a cause of action occurring only one year ago.

REP. ANDERSON said that under the Wyatt Amendment, they would have seven years beyond the effective date to file on that cause of action. Without the amendment, they would only have three years after the effective date.

Vote: The amendment failed by a voice vote. Those voting Aye being **REPS. WYATT, CAREY, MC CULLOCH, SHEA, KOTTEL, CURTISS** and **HURDLE.**

Motion/Vote: **REP. ANDERSON MOVED HB 37 DO PASS.** Motion carried unanimously.

Motion: **REP. CLIFF TREXLER MOVED TO ADJOURN.**

Comments: This set of minutes is complete on one 90-minute tape.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/17/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee			✓
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

January 17, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 37** (first reading copy -- white) **do pass.**

Signed: Bob Clark
Bob Clark, Chair

1-17

Committee Vote:
Yes 18, No 0.

141039SC.Hbk

Programs of Montana, and said that the organization represented out-patient and some in-patient CD programs across the state. CDPM also supported the bill. She said they should have no trouble whatsoever adapting to a drug information course. On a personal note, she spoke about an acquaintance who had recently gone through the alcohol court school and said it was an intimidating and humiliating experience and said he would definitely not drink and drive again. She thought it would also be true for this particular course.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR NELSON asked if they were talking about two different courses, drug and chemical dependency treatment.

Mr. Bruno answered that there was currently a DUI court school course approved by their office. This would be a course they would incorporate within current curriculum, including drug laws and effects. In answer to a further question about costs, he replied that based on the cost of each school, averaging from $125 to $200, based on providing costs. He said that they generally re-figure their court school costs to cover those not able to pay. He did not know what the percentage of those would be. When the Senator asked about insurance, he said if treatment was recommended, it alone would be covered by those covered by insurance. The others are billed on an ability to pay backed by state and federal support. He said he would try to provide an estimate of those unable to pay.

Closing by Sponsor:

REPRESENTATIVE COBB said he thought the numbers of those unable to pay would be about 15 per cent as an estimate. Hopefully, some kids would be saved from doing drugs, he said, and he hoped for a success rate of up to 20 to 30 percent. The immediate effect is not just getting a misdemeanor and going on probation, but they would have to do this on a weekly basis and would be more of a harassment effect. He hoped to prevent future felonies.

HEARING ON HB 37

Opening Statement by Sponsor:

The sponsor was not present so **SENATOR MIKE HALLIGAN, Senate District 34 of Missoula,** presented the bill to the committee. He said he had actually done the bill draft request on this bill on behalf of the Department of Administration. The reason behind the bill was that in the early days when the statute was passed inmates going to the Montana State Prison were not represented by

counsel as they are today and there was no availability of libraries inside the prison to assist inmates to pursue cases. The statutes of limitations was trying to reflect some sensitivity to those early days when resources were not available. Now they are available, there is Constitutional law and case law and there is no longer a tolling of the statute of limitations, he said.

Opponent's Testimony: **Bill Gianoulias, attorney, working for Risk Management in Tort Defense, Department of Administration** helped to explain the bill. At one time there was a need to allow inmates an extension on the statute of limitations because access to courts may have been difficult. He did not think it was difficult any more. The best example, he said, is that out of 203 cases they were currently defending, 97 are brought by inmates. Inmates own computers in prison or have access to them. They also have a library paid for by the state and there are inmate law clerks within the prison. Nobody gets to prison without having a lawyer in the first place and there are fill-in-the-blank forms available to file civil rights claims in federal court and once filed, federal courts accomplish service on the state. There is no reason then for a five-year statute of limitation extension any more, he said. He said one tricky portion had to do with retroactivity in the bill. They did not want to cut anyone off, so they provided that no one would be cut off by the passage of the bill. The minimum time anyone would have to recognize that their limitations would be decreased would be six months. He also presented written testimony. **(EXHIBIT 5).**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

SENATOR HALLIGAN closed on HB 37 without further comments.

{Tape: 2; Side: A; Approx. Counter: 00; Comments: .}

EXECUTIVE ACTION ON SB 13

Motion: SENATOR HALLIGAN MOVED THAT THE COMMITTEE ADOPT THE AMENDMENTS TO SB 13 AS CONTAINED IN (EXHIBIT 6).

Discussion: SENATOR HALLIGAN explained that his amendments addressed the concerns of SENATOR SPRAGUE that there would be an insurance problem for young people getting drivers' license suspensions. He said that in case of non-appearance, there would

Valencia Lane said she thought it was from the onset. The first sentence said that the time is tolled during the period of the disability whether it is minority or mental illness. The second sentence said it would not be tolled more than five years, she said. But, she said, these were not changes in existing law, merely a re-statement.

CHAIRMAN CRIPPEN said they would wait for one day for clarification on this language.

EXECUTIVE ACTION ON SB 272

Discussion: **SENATOR GROSFIELD** explained the amendments he had written addressing Page 2, Line 23 striking the word "affidavit" and inserting the words, "acknowledged statement." He further stated that on Page 2, Line 24 he struck a sentence regarding a death certificate and added, "the acknowledged statement must include a legal description of the real property."

Motion/Vote: **SENATOR GROSFIELD MOVED TO ADOPT THE AMENDMENTS.** The motion **CARRIED UNANIMOUSLY** on an oral vote.

Motion/Vote: **SENATOR GROSFIELD MOVED THAT SB 272 DO PASS AS AMENDED.** The motion **CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON SB 37

Discussion: **CHAIRMAN CRIPPEN** asked **Mr. Gianoulias** about the language on Section 1, Subsection 1. He questioned when the tolling start on the seriously mental illness provision?

Mr. Gianoulias stated that the bill was not intended to change that. He quoted a case called Bestwina. All this tried to do was eliminate the time extension for people incarcerated. The deletion of the word "minority" at the end was because it was not a disability,, he said, but the tolling would still apply to a minor.

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 37 BE CONCURRED IN.** The motion **CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 108

Discussion: There was discussion about the fiscal note, where the money comes from, and that the judge may recommend treatment.

SENATOR HALLIGAN said he had clients that had to fight with the judges over treatment issues. He thought the bill was far more structured that it at first appeared.

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL EXECUTIVE SESSION DATE 2-2-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		
Valencia	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

February 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 37 (third reading copy -- blue), respectfully report that HB 37 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

281331SC.SPV

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 2-2-95
BILL NO. HB 37

DEPARTMENT OF ADMINISTRATION

RISK MANAGEMENT AND TORT DEFENSE DIVISION

MARC RACICOT, GOVERNOR

1500 EAST SIXTH—LOWER LEVEL
PO BOX 200124

STATE OF MONTANA

TELEPHONE (406) 444-2421
FAX (406) 444-2592

HELENA, MONTANA 59620-0124

February 2, 1995

TESTIMONY IN SUPPORT OF HB 37, by Bill Gianoulias, Chief Defense Counsel, Risk Management and Tort Defense Division, Department of Administration.

The Risk Management and Tort Defense Division requested and supports HB 37. This bill simply provides that people in prison have the same statute of limitations that applies to everyone else.

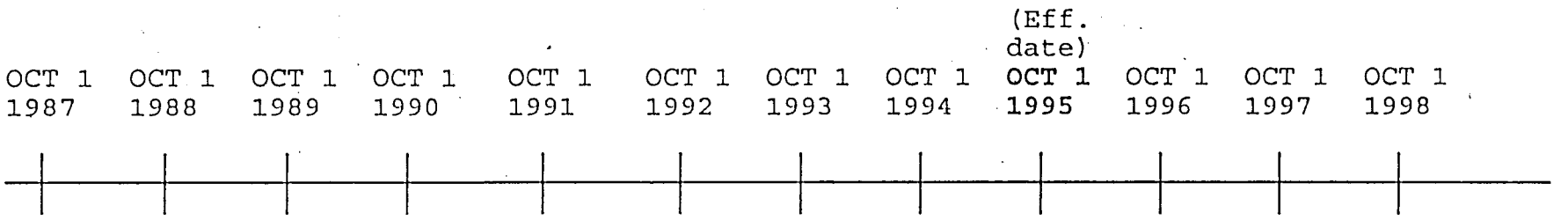
Section 27-2-401 MCA now provides a person imprisoned on a criminal charge, or under a sentence for a term less than life, with up to a five year extension for bringing a lawsuit. If a person in prison has a tort claim to file, instead of a three year statute of limitations, the time period to file a lawsuit is eight years. This amendment will eliminate the five year extension and allow a person in prison three years to file suit, the same amount of time as for everyone else.

While inmates may have had difficulty gaining access to courts in the past, it is not so now. Of 203 open lawsuits we are presently defending, 97 of them have been brought by inmates. Inmates also have access to courts through the Montana Defender Project which is funded by the state and run by the University of Montana Law School. Many inmates have access to computers and access to a law library maintained by the state for the inmates at the prison.

We request that you pass HB 37.

HB 37 EXAMPLE

EXAMPLE ASSUMES TORT ACTION WITH 3 YEAR STATUTE OF LIMITATIONS



<———————— UNAFFECTED

Any cause of action arising before 10/1/90 is unaffected by this bill (up to 8 year statute of limitations applies).

———————————————— 3-8 YR. S/L

Any cause of action arising between 10/1/90 and 10/1/95 has a last date to file of 10/1/98 (statute of limitations is between 3 and up to 8 years).

————————————>3 YR. S/L

Any cause of action arising after 10/1/95 (the effective date of this act) has a 3 year statute of limitations.

DATE 2-2-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: 8:30 Exec. Sess: SB 13, 132, 167, 200

Hearing 10AM: HB 37, HB 108, SB 189, SB 272

PLEASE PRINT

Check One

Name	Representing	Bill No.	Support	Oppose
Bill Gravelines	RMTD - Dept of Adm	HB 37	✓	
Dean Roberts	Mt. Wtr. Dist.	SB 189	✓	
Brendan Nordlund	Dept of Justice	SB 159	✓	
Sarah Bond	11	11	✓	
DARRYL BRUNO	DCHS/AIDAID	HB 108	X	
KATHY McGowan	CDPM	108	✓	
	Gravelines			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10